

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TREVON FOREMAN AND LOTISHA  
DAVIDSON,  
  
Plaintiffs,  
  
v.  
  
DISTRICT ATTORNEY OF BAKERSFIELD,  
  
Defendant.

Case No. 1:22-cv-00581-ADA-CDB

FINDINGS AND RECOMMENDATIONS  
THAT PLAINTIFF TREVON FOREMAN  
BE DISMISSED FOR FAILURE TO  
COMPLY WITH THE COURT'S ORDERS  
AND FAILURE TO PROSECUTE

(Doc. 11)

**21- DAY DEADLINE**

Plaintiffs Trevon Foreman and Lotisha Davidson ("Plaintiffs") are proceeding *pro se* in this action. Plaintiffs filed their complaint against Defendant District Attorney of Bakersfield on May 16, 2022. (Doc. 1.) On that same date, Plaintiff Foreman, a state prisoner, filed an application to proceed *in forma pauperis* ("IFP") without prepayment of fees. (Doc. 2.)

On May 20, 2022, U.S. Magistrate Judge Sheila K. Oberto issued an order finding that Plaintiff Foreman failed to submit to the Court a certified copy of his trust fund account statement, providing him another IFP application form, and directing him to file an amended IFP application that corrects the identified deficiencies within thirty days. (Doc. 4.)

Having received no response from Plaintiff Foreman, Magistrate Judge Oberto issued an order to show cause ("OSC") why he should not be dismissed for his failure to comply with the

1 Court's order and for his failure to prosecute this action.<sup>1</sup> (Doc. 6.) Plaintiff Foreman was warned  
2 in both the initial order and the OSC that the failure to comply with the Court's order would result  
3 in a recommendation to the presiding district judge of dismissal. (*Id.* See also Doc. 4.)

4 On July 22, 2022, Judge Oberto issued findings and recommendations that Plaintiff  
5 Foreman be dismissed without prejudice for his failure to obey the Court's orders and prosecute  
6 this action. (Doc. 7.) The findings and recommendations were served on Plaintiff Foreman and  
7 contained notice that any objections thereto were to be filed within 21 days after service. (*Id.*)

8 On July 26, 2022, Plaintiff Foreman filed a certified copy of his prisoner trust account (Doc.  
9 8) but neglected to file an amended IFP application as previously ordered. On July 29, 2022,  
10 Magistrate Judge Oberto withdrew the findings and recommendations and ordered Plaintiff to either  
11 complete, sign and file an IFP application or pay the \$402.00 filing fee for this action within 30  
12 days of the order.

13 On September 8, 2022, Magistrate Judge Oberto issued another OSC ordering Plaintiff  
14 Foreman to show cause within 21 days of service of the OSC (*e.g.*, not later than September 29,  
15 2022) why he should not be dismissed for his failure to comply with the Court's order and for his  
16 failure to prosecute this action. (Doc. 11). To date, Plaintiff Foreman has not complied with the  
17 OSC and has not made any filings explaining his delinquency. Given his repeated failures to follow  
18 the Court's orders and to prosecute this action, it is the undersigned's recommendation that Plaintiff  
19 Foreman be dismissed from this case with prejudice.

20 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, "[f]ailure of counsel or of  
21 a party to comply with . . . any order of the Court may be grounds for the imposition by the Court  
22 of any and all sanctions . . . within the inherent power of the Court." E.D. Cal. Local Rule 110.  
23 "District courts have inherent power to control their dockets," and in exercising that power, a court  
24 may impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of Los*

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26 <sup>1</sup> Plaintiff Lotisha Davidson filed her own application to proceed in forma pauperis, but it contains information related  
27 to only her finances. (See Doc. 5.) "Where there are multiple plaintiffs in a single action, the plaintiffs may not proceed  
28 in forma pauperis unless *all* of them demonstrate inability to pay the filing fee." *Darden v. Indymac Bancorp, Inc.*,  
No. CIV S-09-2970 JAM DAD, 2009 WL 5206637, at \*1 (E.D. Cal. Dec. 23, 2009) (emphasis added); see also  
*Anderson v. California*, No. 10 CV 2216 MMA (AJB), 2010 WL 4316996, at \*1 (S.D. Cal. Oct. 27, 2010) ("[A]lthough  
only one filing fee needs to be paid per case, if multiple plaintiffs seek to proceed in forma pauperis, each plaintiff must  
qualify for IFP status.").

1 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986), *cert. denied*, 479 U.S. 829 (1986). A court may dismiss  
 2 an action with prejudice based on a party's failure to prosecute an action or failure to obey a court  
 3 order, or failure to comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61  
 4 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);  
 5 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
 6 with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for  
 7 failure to prosecute and to comply with local rules).

8 The Court has considered the five *Thompson* factors and concludes dismissal with prejudice  
 9 is warranted. 782 F.2d at 831. In particular, given that the case may proceed as to Plaintiff  
 10 Davidson notwithstanding Plaintiff Foreman's dismissal, the Court finds that any prejudice to the  
 11 defendants resulting from dismissal is minimal and outweighed by the public's interest in  
 12 expeditious resolution of this litigation.

13 Accordingly, it is **HEREBY RECOMMENDED** that Plaintiff Trevon Foreman be  
 14 dismissed from this case with prejudice for his failure to obey the Court's orders and to prosecute  
 15 this action.

16 These Findings and Recommendations will be submitted to the United States District Judge  
 17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1)(B). **Within twenty-**  
 18 **one (21) days** after being served with these Findings and Recommendations, any plaintiff may file  
 19 written objections with the Court. The document should be captioned "Objections to Magistrate  
 20 Judge's Findings and Recommendations." Plaintiffs are advised that failure to file objections  
 21 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772  
 22 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24 Dated: **November 1, 2022**

25   
 26 UNITED STATES MAGISTRATE JUDGE